

The 14th September, 1982

No. 9(1) 82-6Lab/8481.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of The Faridabad Central Co-operative Consumers' Store Ltd., Faridabad:—

BEFORE SHRI M. C. BHARDWAI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 76 of 1979

between

SHRI RAJINDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S. THE FARIDABAD
CENTRAL CO-OPERATIVE CONSUMERS' STORE LTD., FARIDABAD

Present :—

Shri S. S. Gupta for the workman.

Nemo for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Rajinder Singh and the management of M/s. The Faridabad Central Co-operative Consumers' Store Ltd., Faridabad, by order No. 9878, dated 28th February, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Rajinder Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor on 9th August, 1979 :—

- (1) Whether the management is not an industry under the I.D. Act?
- (2) Whether the claimant is a workman under the I.D. Act?
- (3) Whether the termination of services of the workman was justified and in order?
- (4) Relief?

Issue Nos. 1 and 2 were treated as preliminary issues and after trial I held both issues in favour of the workman by order, dated 3rd September, 1981.

Issue No. 3.—The management was called upon to lead evidence on this issue but the management failed to appear on the date fixed for evidence, therefore, evidence was closed. The workman was given opportunity to lead his evidence. He examined himself on 14th January, 1982. The arguments were heard. The concerned workman deposed that he was appointed on 23rd May, 1973. He was stopped from work on 28th July, 1975. No letter of termination was issued to him nor he was given charge-sheet. He submitted two letters Exhibit W-1 and W-2 by registered post. Postal receipts were Exhibit W-3 and W-4, but he did not receive any reply. He made complaint copy Exhibit W-5, to the Labour Inspector. He submitted his demand notice Exhibit W-6 when all his other efforts failed.

The learned representative for the workman argued that the management has levelled the charge of embezzlement but no charge-sheet was served upon him nor he was ever prosecuted. He made complaint and representation but to no effect. He further argued that the termination of the workman in the absence of any charge-sheet and proof amounted to retrenchment as defined under section 2(oo) of the Industrial Disputes Act and non-compliance of section 25-F made termination order void.

I have gone through the evidence and find that no charge-sheet was served upon the workman nor any domestic enquiry was held into the conduct. It is alleged in the written statement that the workman abandoned his job without handing over the proper charge and from physical verification there was a shortage of stock. It is also alleged that his conduct was not satisfactory, therefore, his service was terminated. It was an admitted fact that the workman had more than one year service at his credit. He was appointed on 23rd May, 1973 and

his service was terminated in the year 1975. The management did not hold any domestic enquiry in the misconduct which made it a termination simplicitor. In such situation, it was obligatory upon the management to comply with the provision of Section 25-F of the Industrial Disputes Act, 1947 as held by Hon'ble Supreme Court in 1980-I-LLJ-page 72 in the case of Smt. Santosh Gupta, vs. Sate Bank of Patiala and I. D. D'Souza and Executive Engineer, Southern Railway reported in 1982 I-LJ page 330. There is no evidence to show such compliance. It was also not the case of the management that the workman was dismissed for misconduct after compliance of the principles of natural justice. In these circumstances, I find the termination order not in order. Therefore the only consequence was that the workman remained in service and he was also entitled to his reinstatement with full back wages. I pass my award accordingly.

Dated, the 4th August, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 869, dated the 10th August, 1982

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lab-8484.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Sidhana Engineering Works, Plot No. 171, Sector, 24, Faridabad:—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Complaint No. 2/80

between

THE WORKMAN SHRI KAMLA PRASHAD SINGH AND THE MANAGEMENT OF M/S SIDANA
ENGINEERING WORKS, PLOT NO. 171, SECTOR-24, FARIDABAD

Present :— Shri R.C. Sharma for the management.

• None for the workman

AWARD

The present complaint was filed under Section 33-A of the Industrial Disputes Act, 1947 by Shri Kamla Prashad Singh workman. Notice of complaint was sent to the opposite party, the management, who appeared and filed its reply. On the pleadings of the parties, the following issue was framed by my order, dated 2nd June, 1981 :—

(1) Whether the management has contravened the section of 33-A ?

Another issue was framed later on which was about the justification of termination. It reads as under :—

(2) Whether the termination of service is justified and in order ? If not, to what relief is he entitled ?

Issue No. 1.—The complainant who appeared as WW-1 deposed that he was President of Sidhwan Engineering Works Employees Union Regd. No 607. He used to appear in the bonus case. The management did not obtain approval or permission for terminating his services.

No other evidence was led by him in the case. The management examined MW-1 Shri Ram Sarouf, Accountant and they did not lead any evidence on this issue. The complainant did not place on record a copy of reference pending in his Court nor placed any other document about the pendency of the dispute at the relevant time. In his complaint, he stated that the opposite party was guilty of contravention the provision of Section 33-A

but here again there was no mention of Referrnce Number, date of its receipt and date of its disposal to show pendency of the dispute at the time of termination of service. Section 33-A reads as under :—

“33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly.”

In the above provision emphasis was upon the change of conditions of service during the pendency of proceedings. The complainant failed to mention and describe the pendency of proceedings at the time of termination of his service. In the absence of pendency, the provision of Section 33 does not come into play. The complainant failed to prove this issue. It is decided against him.

Issue No. 2—Evidence was led by the parties on this issue. It was needless to go into the same because the jurisdiction of the Tribunal in a complaint based upon the contravention of the provision of Section 33 and in case no contravention was proved the justification of termination could be gone into. Therefore, there cannot be any adjudication on this issue.

The present complaint fails on issue Nos. 1 and 2 and the complainant was not entitled to any relief in the present complaint.

Dated, the 4th August, 1982.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad

Endorsement No 872, dated 10th August, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lab/8486.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Indo Nippon Foods Pvt., Ltd., Industrial Estate, Palam, Gurgaon Road, Gurgaon:—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA,
FARIDABAD

Reference No. 154/1979

between

THE WORKMAN AND THE MANAGEMENT OF M/S INDO NIPPON FOODS PRIVATE LIMITED,
INDUSTRIAL ESTATE, PALAM GURGAON ROAD, GURGAON

Present :—Shri N.P. Gupta for the management.

None for the workmen.

AWARD

The State Government of Haryana referred the following dispute between the management of M/s. Indo Nippon Foods Private Limited, Industrial Estate, Palam, Gurgaon Road, Gurgaon and its workman, by order No. ID/GG/16-79/21870, dated 18th May, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the workmen are entitled to the grant of bonus for the year 1977-78 at the higher rate than declared by the management? If so, with what details?

Notices were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor on 23rd August, 1979 :—

- (1) Whether the workmen are estopped for raising the dispute by their own conduct ?
- (2) Whether the workmen have relinquished their right to the demand ?
- (3) Whether there is a proper espousal in respect of demand ?
- (4) Whether the workmen are entitled to the grant of bonus for the year 1977-78 at the higher rate than declared by the management ? If so, with what details ?

And the case was fixed for the evidence of the workmen who examined Shri R.N. Roy, President, Mercantile Employees Association as WW-1 and the management examined Shri Khazan Singh, Security Officer as MW-1 and Shri Balraj Kalia, Manager as MW-2. Shri R.N. Roy of Mercantile Employees Association appeared as WW-1 on preliminary issue but no evidence was led by the workmen on issue No. 4 of which the management led its evidence *ex parte*.

Issue Nos. 1 to 3. WW-1 deposed that he had brought list of members Ex. W-1 which drawn from the workmen employed by the management. He had also brought the membership register and copy of minutes of the meeting held. It served demand notice upon the management. Copies were Ex. W-2 and W-3. In cross-examination, he replied that he had not brought membership forms of the union, nor counterfoils of the subscription receipts. He did not know strength of the management of factory.

MW-1 deposed that he was Time-keeper of the management factory. There was union of workers. In cross-examination, he denied the suggestion that the workers of this factory were members of Mercantile Employees Association. He did not know if Shri R.N. Roy was President of the Association.

I have considered the documents placed upon the file on behalf of the workmen and find that the union had placed copy of minutes of the meeting Ex. W-2 which was signed by 18 workmen for raising demand of bonus. In view of it, I decide that the workmen had espoused the demand. The management failed to show as to how the workmen are estopped from raising their claim for bonus. Therefore, I decide issue No. 3 in favour of the workman and issue Nos. 1 and 2 against the management.

Issue No. 4.—Shri Balraj Kalia Manager deposed that he was qualified chartered accountant. He was working as manager. The factory started production on 16th January, 1976 and first balance sheet was prepared for the year 1976-77 and second 1977-78. Financial year was during April to March. The company had paid bonus for the first year at the rate of 14 per cent and for the year 1977-78 at the rate of 8.33 per cent because in this year, there was less profit. Bonus computation chart was Ex. M-3. Balance-sheet was Ex.-4 which was prepared as per record of the company by him. Balance sheet was certified by the auditors and certificate was Ex. M-5. Computation chart for bonus 1976-77 was Ex. M-7 which was also prepared by him. He himself looked after and supervised accounts work. The workmen had received payment of bonus without any objection for the year 1977-78.

I have gone through the balance-sheet and computation chart. According to the chart, there was deficit in the allocable surplus for the year under reference amounting to Rs. 9,097. Statutory bonus payable was 8.33 per cent whereas surplus available during the previous year brought forward was Rs. 19,762. Thus net available was Rs. 10,665. It was short of Rs. 6,882.37 paise for making payment of Rs. 17,147.37 paise as bonus. Thus the workmen are not entitled to bonus at higher rate than 8.33 per cent. I pass my award accordingly.

Dated. the 30th July, 1982.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 874, dated the 10th August, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.